IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 2495 of 2007()

CRA.351/2005 of SESSIONS COURT, KOLLAM
CC.1404/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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REVN. PETITIONER:

RADHAKRISHNAN, S/O.GOVINDAN ACHARY,
KUMBAZHA PADINJATTATHIL,
EAST OF MODEL SCHOOL,
VENDAR P.O.,
KOTTARAKKARA, KOLLAM.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

2. CHANDRAN PILLAI, ARYABHAVAN,
ANAKATTOOR MURI,
NEDUVATHOOR VILLAGE,
KOTTARAKKARA.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26.6.2007 , THE COURT ON 26/06/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2495 OF 2007

Dated this the 26th day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1404/2003 on the file of the J.F.C.M.-I, Kottarakkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above

finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. Since the delay has been condoned without notice to the complainant, I am of the view that the petitioner should compensate for the same also. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.80,000/- (Rupees eighty thousand only) within three months from today, the imprisonment already undergone by the revision petitioner will suffice. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, the sentence imposed on him by the trial court shall revive. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner. As and when the amount is paid to the 2nd respondent complainant, the revision petitioner shall be released from prison unless his continued detention is needed in connection with any other case.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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